

AMENDMENT
Serial No. 10/813,918
Docket No. LDT01-GN001

REMARKS

Introductory Comments

Claims 1-42 and 44-80 are pending in the present application. Claims 1-22, 49-71, and 76-80 have been withdrawn in light of the previous restriction requirement. Claims 23, 24, 26-35, 37, 44-48, 72, 73, and 75 have been amended. Claim 43 has been cancelled. Reconsideration of the application is respectfully requested.

Telephone Interview

Applicants wish to thank Examiner Tomaszewski and Examiner Thomas for the courtesies extended during the telephone interview of August 25, 2005. The interview included a discussion regarding the disclosure of U.S. Patent Application Publication No. 2004/0068420 to Davis and Applicants' understanding that the reference did not pertain to generating a donor record. It was specifically pointed out by Applicants' representative that Davis provided no disclosure regarding generating a donor record that included updated information regarding the condition of potentially transplantable organs sufficient to deduce whether the organs were in fact transplantable. Applicants understood both Examiners to confirm that Applicants' conclusions about the disclosure of Davis appeared to be correct, however, further review of Davis would be required to confirm this conclusion. It was suggested by both Examiners that the claims be amended to clarify the timeframe in which the donor record is compiled. However, no agreement was reached during the telephone interview with regard to allowance of the claims.

Restriction Requirement

The August 12 Office action indicates that the pending claims, 1-80, are subject to a restriction or election requirement. The Office action indicates that Applicants are required under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits.

As indicated on pages 2 and 3 of the August 12 Office action, it is alleged that the application contains claims directed to four patentably distinct inventions: (1) Species I, corresponding to claims 1-22, drawn to a method of accessing transplant donor data from

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a remote location, classified in class 705, subclass 2; (2) Species II, corresponding to claims 23-48 and 72-75, drawn to a method of gathering and inputting transplant donor data to a database, classified in class 707, subclass 104.1; (3) Species III, corresponding to claims 49-71, drawn to a method of organizing and making available transplant donor data, classified in class 707, subclass 9; and (4) Species IV, corresponding to claims 76-80, drawn to a system for facilitating the dissemination of information pertaining to transplantable organs and tissue from a donor hospital to a transplant center, classified in class 709, subclass 201. Applicants provisionally elected over the telephone to prosecute claims 23-48 and 72-75, corresponding to Species II, drawn to methods of gathering and inputting transplant donor data to a database. Applicants hereby confirm this provisional election and elect in writing to prosecute claims 23-48 and 72-75, corresponding to Species II, without traverse.

If the Examiner holds that the instant election is proper, cancellation of claims 1-22, 49-71, and 76-80 will occur in Applicants' response to the immediately following Office action on the merits. Favorable consideration of the elected claims is respectfully requested.

35 U.S.C. § 102 Rejections -- Davis

Claims 23-25, 27-37, 43-48, and 72-74 stand rejected under 35 U.S.C. 102(e) as being allegedly anticipated by U.S. Patent Application Publication No. 2004/0068420 to Davis ("Davis"). This ground of rejection has been overcome by the amendments to claims 23, 45, and 72. The rejection of claim 43 is rendered moot by the cancellation of claim 43. Reconsideration and withdrawal of the rejections of record for claims 23-25, 27-37, 44-48, and 72-74 are respectfully requested.

Claims 23, 45, and 72 have been amended to include the limitation that the transplant donor record is generated substantially contemporaneous with the harvesting of the donor organ. Davis does not disclose a transplant donor record, nor a transplant donor record that is generated substantially contemporaneous with the harvesting of the donor organ.

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Davis is directed to a pre-registration system for tissue donation where the donor can designate the beneficiary from the sale of the tissue. In one embodiment of Davis, a potential tissue donor registers with the tissue donation coordination system (TDCS) and records data specific to the wishes and condition of the donor while the donor is alive; i.e., well prior to the time of any tissue donation. The TDCS includes entries for the types of tissue the donor is willing to donate, along with completing consent forms to ensure that the wishes of the donor have been documented and will be effectuated. One of the features that the TDCS includes is the ability to designate beneficiaries for payments received from the sales of donated tissue. Davis discloses that the beneficiary may include family members or an insurance company where outstanding medical bills remain when the donor dies. The TDCS provides a database of these tissue pledge records, where the intent to donate tissue may be validated and acted upon when the donor dies. However, no new information is added to the tissue pledge record when the donor dies regarding the donated tissue. In other words, the system disclosed by Davis does not address the condition of harvested organs or any tracking system or validation system for determining the compatibility of harvested organs with potential recipients of such transplanted organs. Thus, the applicability of the system disclosed by Davis ends, in a chronological sense, well prior to the system disclosed by Applicants. Thus, there is no overlap between Davis and the instant claimed invention, nor any disclosure of how the system of Davis could be utilized to read on the amended claims.

In light of the foregoing, it is respectfully submitted that Davis fails to disclose each and every one of the claimed limitations of claims 23, 45, and 72. Likewise, Davis fails to disclose each and every one of the limitations of claims 24, 25, 27-37, 44, 46-48, 73, and 74 depending from claims 23, 45, and 72 for at least the same reasons articulated above for claims 23, 45, and 72. Reconsideration and withdrawal of the rejections of record for claims 23-25, 27-37, 44-48, and 72-74 are respectfully requested.

35 U.S.C. § 103 Rejections -- Davis & Fletcher

Claims 26, 40, and 75 stand rejected under 35 U.S.C. 103(a) as being allegedly obvious over U.S. Patent Application Publication No. 2004/0068420 to Davis ("Davis")

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in view of U.S. Patent Application Publication No. 2003/0154108 to Fletcher-Haynes ("Fletcher"). This ground of rejection has been overcome by the amendments to claims 23 and 75.

As discussed above, Davis does not disclose each and every one of the limitations of claim 23, and likewise fails to disclose each and every one of the limitations of claim 75. For example, Davis fails to disclose a transplant donor record, and more specifically, fails to disclose a transplant donor record generated substantially contemporaneous with the harvesting of the donor organ. Fletcher likewise fails to disclose a transplant donor record generated substantially contemporaneous with the harvesting of the donor organ.

Fletcher is directed to a blood collection and management system. In no way is Fletcher related to organ donation and in no way does Fletcher disclose a transplant donor record, nor a transplant donor record that is generated substantially contemporaneous with the harvesting of the donor organ. To argue that Fletcher discloses a transplant donor record by indicating that blood is a "donor organ" completely obfuscates the claimed term "transplant donor record".

The Office action cites Fletcher for the proposition that Fletcher allegedly teaches features well known in the art. While Applicants' respectfully disagree with this conclusion as it applies to the field of endeavor of the present invention, this conclusion does not negate the shortcomings of Davis when combined with Fletcher that fail to disclose each and every one of the limitations of claims 26, 40, and 75.

In light of the foregoing, it is respectfully submitted that the combination of Davis with Fletcher fails to disclose each and every one of the claimed limitations of claims 26, 40, 75. Reconsideration and withdrawal of the rejections of record for claims 26, 40, and 75 are respectfully requested.

35 U.S.C. § 103 Rejections -- Davis & Maxwell

Claims 38 and 39 stand rejected under 35 U.S.C. 103(a) as being allegedly obvious over U.S. Patent Application Publication No. 2004/0068420 to Davis ("Davis") in view of U.S. Patent Application Publication No. 2004/0148229 to Maxwell

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(“Maxwell”). This ground of rejection has been overcome by the amendments to claim 23.

As discussed above, Davis does not disclose each and every one of the limitations of claim 23. For example, Davis fails to disclose a transplant donor record generated substantially contemporaneous with the harvesting of the donor organ. Maxwell likewise fails to disclose a transplant donor record generated substantially contemporaneous with the harvesting of the donor organ.

Maxwell is not even closely related to the instant invention. The field of endeavor of Maxwell is online purchasing of software. In no way is Maxwell related to organ donation, and in no way discloses a transplant donor record, nor a transplant donor record that is generated substantially contemporaneous with the harvesting of the donor organ. In sum, Maxwell is nonanalogous art to the instant application.

The Office action cites Maxwell for the proposition that Maxwell allegedly teaches features well known in the art. While Applicants’ respectfully disagree at least in part because Maxwell is nonanalogous art, this conclusion does not negate the shortcomings of Davis when combined with Maxwell that fail to disclose each and every one of the limitations of claims 38 and 39.

In light of the foregoing, it is respectfully submitted that the combination of Davis with Maxwell fails to disclose each and every one of the claimed limitations of claims 38 and 39. Reconsideration and withdrawal of the rejections of record for claims 38 and 39 are respectfully requested.

35 U.S.C. § 103 Rejections -- Davis, Maxwell & Fletcher

Claims 41 and 42 stand rejected under 35 U.S.C. 103(a) as being allegedly obvious over U.S. Patent Application Publication No. 2004/0068420 to Davis (“Davis”) in view of U.S. Patent Application Publication No. 2004/0148229 to Maxwell (“Maxwell”) and in further view of U.S. Patent Application Publication No. 2003/0154108 to Fletcher-Haynes (“Fletcher”). This ground of rejection has been overcome by the amendments to claim 23.

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As discussed exhaustingly above, Davis does not disclose each and every one of the limitations of claim 23. Likewise, Fletcher and Maxwell fail to disclose each and every one of the limitations of claim 23. Moreover, Davis when combined with Fletcher, when combined with Maxwell fails to disclose each and every one of the limitations of claim 23. In order for claims 41 and 42 to be obvious in light of these cited references, at least the compilation must disclose all the recited limitations. In light of the clear absence of each of the cited references teaching at least the act of generating a donor record substantially contemporaneous with the harvesting of the donor organ, it is clear that claims 41 and 42 are patentable over this combination.

In light of the foregoing, it is respectfully submitted that Davis, Fletcher, and Maxwell fail to disclose each and every one of the claimed limitations of claims 41 and 42. Reconsideration and withdrawal of the rejections of record for claims 41 and 42 are respectfully requested.

Amendments

Claims 23, 45, 72, and 75 have been amended to clarify that the donor record is generated substantially contemporaneous to the harvesting of the donor organs. None of the cited references teach such a limitation.

Claims 23, 24, 26-35, 37, 44-48, 72, 73, and 75 have been amended to clarify that the method claims refer to acts that may occur simultaneously or in sequence with other acts claimed. Applicants wanted to ensure that a construction reciting "steps" could not be construed in a limiting fashion to require discrete steps that must be performed in a particular order or could not be performed simultaneously. In this regard, the amendments to these claims, if anything, would broaden the scope of the claims.

Conclusion

In light of the foregoing, it is respectfully submitted that claims 23-42, 44-48, and 72-75 are patentably distinct from the references cited and are in condition for allowance. Reconsideration and withdrawal of the rejections of record are respectfully requested.

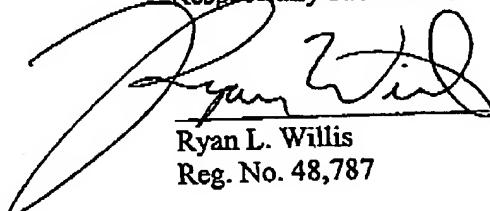
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The Commissioner is hereby authorized to charge any additional fees that may be required by this paper, or to credit any overpayment to Deposit Account 50-3072.

In the event that the Examiner wishes to discuss any aspect of this response, please contact the undersigned at the telephone number indicated below.

Respectfully submitted,



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